UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
Case No. 09-11435(JMP)
-----------------------------------x

In the Matter of:

CHARTER COMMUNICATIONS, INC.,

Debtor.

-----------------------------------x

U.S. Bankruptcy Court
One Bowling Green
New York, New York
October 15, 2009

B e f o r e:

HON. JAMES M. PECK
U.S. BANKRUPTCY JUDGE

(Transcription from audio file)

THE COURT: Be seated, please.

This was my idea. I recall that at the close of the last session on October 1 that I was mindful of the October 15th date and that today is October 15. I recognize that the task that was before the Court was a challenge, not only because of the intrinsic nature of the issues that have presented here, but because, unlike some of you, this is not the only thing I work on. And I want pretty much to be responsive to not only the somewhat arbitrary deadline established by the plan support agreements as it has been extended from time to time, but also in light of the public interest in the issues that are before the Court to be able to provide as early an indication as I can as to how I view the issues.

So the procedure that I have in mind for today is, by my own admission, unusual. I'm going to provide what amounts to a preview of what would be the written decision that would accompany my rulings with respect to confirmation and also the issues that are pending in connection with the adversary proceeding brought by JPMorgan Chase.

I thought about doing this in a couple of ways. One was to just tell you how I

was going to rule and ask you to be patient. But I decided that that was probably not a particularly good approach given that people are paying attention to this and are looking for something more definitive.

So what I'm going to do, and I hope you are all patient, but of course I was patient for days with your openings and closings, I'm going to read into the record my work product to this point, and it represents I believe a fully considered view of the issues that are important in the case, but it does not yet reflect finality in terms of the findings of fact and conclusions of law. Importantly, it reflects how I have deliberated with respect to the issues in dispute and how I have resolved the conflicts that have been present in this courtroom since before the trial began.

As a result, no pun intended, we have reached the beginning of the end. Since these cases were filed on March 27, 2009, Charter Communications, Inc., I define that as CCI, and together with its affiliates, Charter, has been engaged in one of the most hotly contested confirmation battles ever conducted. The conflict

certainly is one of the longest and no doubt also among the most costly.

The Court heard extensive testimony and argument for 19 days, during the period from July 20 through October 1, 2009. At stake was the reorganization and recapitalization of the country's fourth largest cable television company, a leading provider of broadband and cable television services, now under the control of Paul Allen, co-founder of Microsoft and a public figure due to his personal wealth and accomplishments.

Partly due to the importance of the issues and partly due to Mr. Allen's prominence and the billions that he has invested in Charter, these cases are highly visible and have generated considerable public interest. These are perhaps the largest and most complex prearranged bankruptcies ever attempted and in all likelihood rank among the most ambitious and contentious as well.

The business proposition presented aims high, particularly at a time of great dislocation, uncertainty and volatility in the economy. Charter seeks to remove more than $8 billion from its highly leveraged capital

structure, to secure the investment of approximately $1.6 billion in new capital through a rights offering backstopped by a group of bondholders that will be appointing members at CCI's reconstituted board, and to reinstate a senior secured credit facility and certain junior secured debt with the objective of preserving favorable existing credit terms and saving hundreds of millions of dollars in incremental annual interest expense but otherwise would be payable if this senior secured debt had to be replaced at current market pricing.

JPMorgan Chase, as agent for the syndicate of senior lenders, forcefully and skillfully asserts that reinstatement is not an available option here due both to existing events of default relating to the pre-petition financial condition of certain holding companies within the Charter corporate structure and to a change of control default that they claim will occur on the effective date of the plan in violation of covenants in the senior secured credit agreement mandating that Mr. Allen retain a stipulated minimum percentage of voting control. The restructuring premise depends upon Mr. Allen's

holding not less than 35 percent in voting power over the management of Charter Communications Operating LLC, the operating company borrower named in the senior credit agreement.

This aspect of the transaction requires approval of a settlement between Mr. Allen and Charter in which Mr. Allen agrees to maintain his voting percentage at 35 percent as a means to avoid triggering the applicable change of control covenants and to preserve valuable tax attributes. This nominal retention of voting power has been attacked as a gimmick fashioned by corporate lawyers to obscure takeover of the company by bondholders that are well known for their use of so-called loan to own strategies. The restructuring effectively wipes out Mr. Allen's $8 billion investment in Charter and strips him of any meaningful ongoing economic interest in the company.

Regardless of the residual voting power to be held by Mr. Allen, no one seriously disputes that Mr. Allen is walking away from his investment in Charter and is agreeing to maintain his voting power as a structuring device that benefits Charter and its stakeholders. In

practical terms, Charter will cease to be a Paul Allen company assuming that the plan is consummated. His exit clears the way for new investors to influence the management of a restructuring Charter.

While this creative arrangement to preserve value clearly benefits Mr. Allen, it was not his idea. Lazard Freres, as restructuring advisor to Charter, was the chief architect. Lazard recognized the vital importance to the reorganization of avoiding a change of control by means of a structure in which Mr. Allen would agree to retain the requisite voting power.

As a consequence, and despite the fact that all CCI shareholders will lose everything as their equity is cancelled, Mr. Allen as controlling shareholder occupies a position of strength in these cases. His willingness to participate in the structure is pivotal to two sources of value for the Charter estates, the ability to hold on to attractively priced financing and to preserve net operating losses to shelter future income.

Mr. Allen, acting through his representatives, has demanded and has secured the

right to receive substantial compensation in exchange for his cooperation. These bargained-for gives and gets relating to the settlement with Mr. Allen have been challenged by Law Debenture Trust Company, the indenture trustee for the CCI noteholders. The noteholders also complain at length that they have been shortchanged and that the plan proposed by Charter has not treated them fairly and is not confirmable.

As expected in cases involving billions of dollars and unusually complex legal issues that are both fact intensive and subject to differing interpretations and characterizations, tremendous resources have been dedicated to this litigation. The issues presented are important ones, whether the restructuring arrangements negotiated pre-petition with an informal committee of bondholders known as the Crossover Committee are appropriate and should be confirmed, whether defaults exist that preclude reinstatement of senior secured indebtedness, whether the most junior creditors in the capital structure are receiving more value than they would receive in a liquidation, and whether the so-called linchpin settlement between Charter and Mr. Allen is

reasonable and should be approved.

Notably, the issues arise in an uncommonly complicated setting, a large, operationally sound business saddled with almost $22 billion in debt at various levels of a capital structure stacked with multiple intermediate limited liability holding companies. This complex enterprise is endeavoring with singular creativity and determination to reduce its heavy debt load and recapitalize itself during perhaps the most challenging period in the modern era of global corporate finance.

Given the state of the capital markets, the restructuring proposed here by Charter represents an extraordinary achievement, provided that the resulting plan of reorganization is confirmable as a matter of bankruptcy law, and that is the task for the Court, to determine based on the evidence whether this plan designed in the midst of an historic financial crisis succeeds in reaching its lofty goals. This subject matter, reinstatement, the Allen settlement, and fairness of treatment proposed under the plan, is addressed generally in this opinion.

Following careful deliberation, the

Court finds that Charter has met its burden and that the plan should be confirmed.

I will start with a review of pre-petition negotiations.

Following the bankruptcy of Lehman Brothers Holdings Incorporated on September 15, 2008, the global credit markets went into the financial equivalent of cardiac arrest. Commercial lending came to a virtual halt. Smart, sophisticated and otherwise confident businesspeople panicked. No one who went through the period will ever forget the fear engendered by a worldwide crisis of confidence and the inability to obtain credit by conventional means. This was the context for much of the evidence presented during the trial of this matter.

Charter was a highly leveraged company under the control of a prominent man with enormous personal wealth. The company had a patron with deep pockets and a variety of financing and refinancing options available to it during normal credit market conditions. Those options became far more limited in the immediate aftermath of the upheaval of last fall.

I'm going to make what's really a

footnote aside. The Court notes that global economic conditions have improved and stabilized greatly in the last year. In the quarter just ended, the Dow and S&P 500 experienced their best gains in a decade and yesterday the Dow reached 10,000.

The credit markets are also in better shape than they were last year but reportedly are still not functioning normally. Thus, timing of the negotiations is a factor that cannot be ignored. The crisis mentality of last fall spawned this restructuring but it is being evaluated from the perspective of a now more stable and stronger financial sector. The Court recognizes that given the positive turn in the markets, the valuation of Charter by Lazard for purposes of this restructuring may have been performed at a trough in the market for peer companies in the cable industry. That does not alter the facts, however.

No expert has given a credible opinion as to value that contradicts the plan value, and the expert called by JPMorgan Chase with regard to surplus calculations indicated that the absence of a competing transaction at a higher

value tends to confirm the reliability of the value of the transaction described in Charter's plan.

The board, senior management and Charter's advisors certainly were aware that the company was in serious trouble due to the dislocation of the credit markets, lower valuation multiples applicable to peer companies in the cable sector and its own excessive leverage. Charter needed to restructure promptly to avoid a potentially catastrophic freefall bankruptcy and it did so in what may be record time.

The principal architect of Charter's strategy during the period of 2008 through February of 2009 was Jim Milstein who at the time was co-head of the restructuring practice at Lazard and who now works as the senior restructuring officer for the U.S. Treasury. Mr. Milstein had been an advisor to Charter for a number of years and had worked on the design of Charter's many layered tax-driven holding company structure. His advice helped to guide Charter's board throughout this critical period. Mr. Milstein was behind the decision to engage in a high velocity negotiation with the bondholders

while leaving the senior debt in place to take full advantage of favorable pricing applicable to the existing senior indebtedness. Given the uncertainty in the credit markets at the time, it was also unclear whether a senior credit facility this large could be replaced at all on any terms.

His strategy was to prevent a change of control by motivating Mr. Allen to retain his voting power over management, to encourage the bondholders to organize an ad hoc committee, the so-called Crossover Committee, that would retain experienced restructuring professionals at Charter's expense, and to trim debt and raise new equity by having holders of Fulcrum debt securities convert their bonds to equity interests and agree to invest in the reorganized capital structure.

Mr. Milstein and his colleagues at Lazard started to implement this strategy in December. On December 12, 2008 the company issued a press release announcing the commencement of discussions with bondholders about potential restructuring options and through Lazard urged the bondholders to get organized. The negotiations were given an added sense of urgency when Charter

elected not to make an interest installment due in the middle of January and took advantage of the 30-day grace period. That decision not to pay interest energized the discussions among Charter, the Crossover Committee and Mr. Allen related to a so-called straw man proposal for restructuring the enterprise. All parties who participated in this process confirm that the negotiations were pursued aggressively, at arm's length, and in good faith, resulting in an agreement among Mr. Allen and certain members of the Crossover Committee that has become the foundation of Charter's prenegotiated plan.

This agreement succeeded in eliminating the risks of the freefall bankruptcy while providing for new investment, debt forgiveness, preservation of intangible assets, and a stripping down of Mr. Allen's economic stake. The resulting plan, however, has attracted quite a lot of criticism. Parties who are not at the table during this process have become the main objectors to confirmation. The senior lenders complain that they are impaired and that their debt may not be reinstated. They allege a series of nonmonetary defaults under the senior credit

agreement but they openly admit that their goal here is to obtain an interest rate that reflects what will be charged for a new loan in the current market for syndicated commercial loans.

The senior lenders have been paid everything that they are due under the existing facility and they have even received default interest during the bankruptcy cases. The claim to defaults are the means by which the lenders hope to improve their return by obtaining a premium over amounts payable over the existing loan documentation.

JPMorgan and other members of the lending syndicate are troubled that they are being denied the chance to renegotiate the terms of the loan and that bondholders who invested at a junior level of the capital structure are poised to greatly improve their own internal rate of return at the lender's expense.

Viewed simplistically, the litigation over confirmation amounts to an intercreditor dispute over which class of creditors should receive enhanced returns. Viewed more theoretically, the litigation is a test of the Chapter 11 process itself. The parties who

negotiated the plan did so knowing that this major struggle with the lenders would follow. Accordingly, this contest is the culmination of calculated pre-bankruptcy planning that might even be called a gamble designed to obtain significant restructuring benefits over the foreseeable, strenuous objections of formidable adversaries.

The next section of this is surplus and the ability to pay debts as they come due.

JPMorgan contends that Charter had reason to know that it was in serious financial trouble on November 5, 2008 when it elected to draw down $250 million on its senior credit facility even though its enterprise value was depressed to the point that financial disaster was foreseeable. The case against reinstatement really starts here at a board meeting convened in November to consider whether there was adequate surplus to move cash from one level of the capital structure to another by means of dividends from CCO to those designated holding companies that needed to make upcoming scheduled interest payments.

JPMorgan contends that Charter recognized the gravity of the situation and now

that it was in the midst of a genuine crisis at this point. The Court heard a great deal of testimony from a number of witnesses regarding Charter's corporate state of mind in November and its self-awareness as to the fair value of the enterprise. JPMorgan's thesis is that there is a connection between the determination of surplus for purposes of being able to make a permissible cash distribution under Delaware corporate law and the occurrence of a default under the senior credit agreement.

Expert witnesses offer conflicting opinions during the trial on the question of whether certain of Charter's designated holding companies as defined in the senior credit agreement had adequate surplus as of the date Charter began $250 million under that facility. A finding of surplus would require a total enterprise value of not less than $18.7 billion. Notably, the enterprise value for purposes of Charter's plan is well below that figure at $15.4 billion.

The surplus calculation relates to the contention of JP Morgan that certain designated holding companies at the time could not

prospectively pay their debts as they came due in violation of Section 8(G)(5) of the credit agreement. This alleged default is central to JPMorgan's adversary complaint seeking a determination that the default precludes reinstatement of the indebtedness evidenced by the senior credit facility.

The Court is satisfied that the Charter board acted reasonably when it relied on its advisors in determining that there was adequate surplus at the designated holding company level even though in hindsight other plausible alternative valuation scenarios might place Charter's enterprise value below the minimum amount needed for finding surplus. The Court does not believe that sufficient evidence was presented to establish the designated holding companies were unable to meet their obligations as they came due.

Valuing a business such as Charter's is neither simple nor objective and no single generally accepted standard exists for measuring value. Valuation of an enterprise as complex as this one calls for using multiple approaches to value, comparing the business with others having similar characteristics, making appropriate

adjustments, and reasoning by analogy. The art of valuing a business requires the exercise of well-informed judgment. Experts in corporate valuation are often required to do multiple valuation methodologies that are not always congruent and consistent. These methodologies include comparable companies, precedent transactions, publicly-available market data, including the views of Wall Street analysts, and the use of a discounted cash flow analysis that depends on projections of future free cash flows and mathematical calculations.

In the case of Charter, other factors to be considered include the treatment of tax attributes and the possible addition of a so-called control premium. In part due to the complexity of the valuation process and in part due to the frequent role of the valuation expert as an advocate for a particular value proposition, bankruptcy courts commonly confront conflicting opinions as to value offered by qualified professionals. This case is no exception. Witnesses testified regarding valuation issues from Lazard, FTI Consulting, Alix Partners, Alvarez & Marsal, and Duff & Phelps. Not

surprisingly, these witnesses focused on different considerations and did not agree with each other.

Depending on the weight given to the testimony of these witnesses, the Court can conclude that Charter's business was worth more than $21 billion in November of 2008 or as little as $15.4 billion in September of 2009. The swing in value is major and hard to reconcile. The challenge in fairly valuing Charter is also illustrated by the fact that conflicting indications of value were offered by Charter itself.

With respect to the subject of Charter's provable enterprise value at different points in time, the Court finds itself in a quandary of wondering what happened to all that money and questioning the dependability of much of the valuation evidence that has been presented. Billions of notional dollars have disappeared during a period when the markets have stabilized and when no corporate event has taken place that would explain any sharp decline in value. Conveniently, Charter asserts that its business was worth more during the turbulent markets of last fall when it needed surplus funds through its

capital structure than it is deemed to be worth in the fall of 2009.

What this demonstrates is that valuation is a malleable concept, tough to measure and tougher to pin down without a host of explanations, sensitivities and qualifiers. Because point of view is an important part of the process, outcomes are also highly dependent on the perspectives and biases of those doing the measuring. When it comes to valuation, there is no revealed objectively verifiable truth. Values can and do vary and consistency among valuation experts is rare, especially in the context of high stakes litigation.

It is the considerable challenge of proving reliable value for Charter as of November 2008 coupled with Charter's well understood ability to move funds throughout its highly leveraged capital structure by means of intercompany transfers that ultimately defeats JPMorgan's very skillfully presented arguments against reinstatement, particularly in relation to an awkwardly constructed loan covenant referencing the ability of structurally subordinated companies in the capital structure to pay debts as they come

due. That covenant is painfully hard to apply and cannot reasonably be interpreted as having prospective application.

Much has been said and written throughout this litigation concerning the meaning of Section 8(G)(5) of the loan agreement. JPMorgan contends that this provision is forward looking and is designed to address the ability of designated holding companies to meet identifiable obligations as they shall come due in the future. That interpretation is not practical especially for a company like Charter that has a variety of options to fund or defer future obligations. The language used in the loan agreement is not a model of clarity.

Leaving open the prospective gloss urged by JPMorgan as one of the possible interpretations of the provision, JPMorgan cites cases prospectively construing similar language in the context of Chapter 9. These cases are in opposite to the present situation but do demonstrate that the words are capable of being read in the manner urged by JPMorgan. Nonetheless, the Court is convinced that the language is not prospective and that, fairly read,

the covenant deals with a present inability to pay debts as they come due, not one that may occur at some point in the future. A covenant tied to events that might or might not come to pass lacks specificity and is virtually impossible to apply in practice

The forward-looking reading suggested by JPMorgan is not the best way to construe the language. Looking into a future filled with payables that are coming due is a speculative and unworkable exercise. Given the inherent unpredictability of future events and Charter's multiple strategies for moving cash within the corporate family, it is not practical for a lender to declare a default based on what may seem to be well-pended presumptions as to the ability of a holding company to pay debts in the future. Those presumptions could well be wrong.

Additionally, rational loan administration requires measurable and verifiable events of default, not based on speculation. The provision is most logically read as addressing the actual as opposed to the possible future inability to pay a debt as such debts come due.

The evidence demonstrates that

Charter had concerns during relevant periods prior to the restructuring about available surplus and the ability to transfer funds between companies within its capital structure, but such concerns did not rise to the level of establishing lack of surplus and are not the stuff of which covenant defaults are made. A number of witnesses employed by the lenders testified that an event of default such as the ones set forth in Section 8(G)(5) had never been called before in their experience. This adds credence to the notion that in the context of Charter's publicly announced restructuring discussions with its bondholders, JPMorgan issued a notice of default on February 5, 2009 as a strategy to gain leverage and as a means to get a seat at the table with the objective of increasing the pricing of the senior debt.

Even if Section 8(G)(5) were to be read as applying to a provable prospective inability of a holding company to pay its debts as they shall come due, the evidence is still inconclusive in demonstrating a future inability to pay such debts. JPMorgan did prove that Charter had doubts as to the adequacy of surplus and changed its public disclosures on the issue.

JPMorgan's expert witness, Carlene Taylor, offered credible testimony that the value of Charter was less than $18.7 billion, the threshold needed for there to be surplus at the CCH1 level. But that testimony was not by itself sufficient given the contradictory evidence presented by Charter concerning both surplus and the ability to move funds regardless of surplus.

The surplus question is a close call but the answer is not decisive in determining whether Charter had the ability to pay holding company debts when due. Charter knew that it needed to restructure itself and was running out of time to do so, but Charter's board relied on its advisors to conclude that the inert price had adequate surplus and also had various other permissible means to move funds to levels where cash was needed.

Despite a very well-presented case, JPMorgan failed to show convincingly that any designated holding company was unable to pay debts within the meaning of Section 8(G)(5) of the credit agreement.

I next move on to change of control.

The change of control inquiry

requires an examination of the relevant covenants of the credit agreement between JPMorgan and CCO dealing with the percentage of voting power that must be held by the Paul Allen group. These are provisions that have evolved over time to make it easier for Charter to enter into transactions that dilute Mr. Allen's influence as measured by voting power.

Under the 2002 version of the credit agreement, the Paul Allen group was required to have the power to vote or direct the voting of equity interests having at least 51 percent of the ordinary voting power for the management of the borrower and to own at least 25 percent of Charter's economic interests. That ownership requirement has been watered down to a point that Mr. Allen no longer needs to be in control in the traditional sense of the word.

Sections 8(K)(1) and 8(K)(2) under the currently applicable form of credit agreement reduce the minimum voting percentage from 51 percent to 35 percent and eliminate the requirement that Mr. Allen hold any economic interest in Charter. The changes appear to have been intended to make it easier for Charter to

reduce its dependence on Mr. Allen and to attract equity investments from persons other than Mr. Allen while at the same time continuing to impose a minimum level of voting control. These provisions appear designed to allow for a formalistic retention of control, but for the economic reality to shift in the very manner proposed by Charter in its plan.

Section 8(K), as it has changed over time, almost invites smart lawyers to come up with a transaction or series of transactions to restructure Charter without tripping the covenant. Charter's advisors have managed to accomplish that objective. Section 8(K)(1) makes it an event of default if the Paul Allen group ceases to have at least 35 percent determined on a fully diluted basis of the ordinary voting power for the management of the borrower. Section 8(K)(2) complicates the analysis by also mandating against the consummation of any transaction, the result of which is that any person or group has such terms as are used in Section 13(d) and 14(d) of the Securities and Exchange Act of 1934 as amended, other than the Paul Allen group has the power directly or indirectly to vote or direct the

voting of equity interests having more than 35 percent of the ordinary voting power for the management of the borrower unless the Paul Allen group has the power directly or indirectly to vote or direct the voting of equity interests having a greater percentage of the ordinary voting power for the management of the borrower than such person or group. Thus, a default can occur only on consummation of a transaction that results in a change of control as described in these two sections.

The change of control issue presented in the above language is the most challenging problem for Charter in seeking reinstatement. Finding a change of control would defeat reinstatement and result in denial of confirmation. The analysis calls for a determination of what is meant by the phrase "ordinary voting power for the management of the borrower" and whether certain members of the Crossover Committee should be considered a group as that term is used in Section 13(d) of the securities laws.

Both subsections of Section 8(K) deal with Mr. Allen's retained power to control

Charter following hypothetical corporate transactions that would have the effect of reducing the ordinary voting power for the management of the borrower. Because the borrower, here CCO, is a limited liability company, with membership interests that are 100 percent owned by one of a number of the intermediate holding companies within the organizational structure, the measurement of voting power must occur at the CCI level. CCI, the public company, directs activity within each of the business units through its board of directors. Thus, it is from this vantage point removed from the operating assets that the ordinary voting power for the management of the borrower is exercised by means of shareholder votes for directors who in turn govern the management of CCI and its subsidiaries, including CCO.

Section 8(K)(1) imposes the requirement that Mr. Allen have not less than 35 percent of the ordinary voting power for the management of CCO. The restructuring satisfies that requirement by granting Mr. Allen equity that on a fully diluted basis has the right to appoint four out of eleven directors to the board of

reorganized CCI. That would be more than 35 percent. But the analysis does not end there. Section 8(K)(2) adds the element of relative voting power in situations where any group may end up with more than 35 percent of the ordinary voting power unless Mr. Allen has a greater percentage. This additional measurement comes into play only if a group formed for the purpose of acquiring, holding or disposing of Charter securities holds more than 35 percent of the ordinary voting power for the management of CCO.

Section 8(K)(2) calls for a mathematical balancing of relative voting percentages in those instances where a person or group acquires more than 35 percent of ordinary voting power. The provision is something of a mystery, however. Throughout the trial, all parties assumed that the formula, if applicable, and if out of balance, had the potential of derailing the plan, but no one offered a cogent explanation as to the practical importance of the covenant that went beyond its mere existence and mandated technical requirements. The business rationale for the formula is unstated. Presumably the provision is intended to serve as a proxy for

ongoing control by Mr. Allen despite material new investment by another investor or group of investors. But given the modification over time to the change of control covenant in the loan agreement, it is difficult to discern how a slight variation in the percentages one way or the other could have any impact on the credit risk of the borrower. It is simply part of the bargain that Charter struck with its lenders, a corporate landmine to be avoided if reinstatement is to be achieved.

The Court has deliberated at length regarding the conduct of the bondholder members of the Crossover Committee in relation to Section 8(K)(2) and has concluded that these bondholders do not constitute a group. Just because parties are similarly situated and perhaps also similarly motivated does not make them a group. Accordingly, this loan covenant does not apply to the restructuring transaction set forth in the plan. The term "group," for purposes of Section 8(K)(2), was given a meaning that was borrowed from the definition that appears in Section 13(d) of the Securities and Exchange Act, but the application of the defined term is different.

Section 13(d) is a regulatory provision that speaks to disclosure obligations and, as a result, should be liberally construed to achieve the statutory objectives of increased reporting and transparency, while Section 8(K)(2) is a loan covenant that prohibits only a limited category of change of control transactions as such transactions are described and shaped by the language of that covenant.

Because the covenant functions as a trigger to a potential default under a credit facility, it should be construed narrowly so as to enable the borrower to engage in permissible corporate engineering. With that perspective in mind, the most active members of the Crossover Committee, Apollo, Oak Tree and Crestview, do not constitute a group for purposes of Section 8(K)(2). Apollo, Oak Tree and Crestview are certainly members of a group in the sense that they are working together to maximize their investments in Charter and to achieve common economic goals. But they do not fit the definition of a group as used in Section 13(d).

Separate investors would be considered a group and would have reporting

obligations under the securities laws when two or more parties have agreed to acquire, hold, or dispose of shares of an issuer. Here, members of the purported group are clearly working cooperatively and have done so in the past in other comparable transactions, but they are not connected by any formal or informal agreement to act jointly with respect to Charter's securities. There are, however, certain informal indications of cooperative behavior and overlapping business objectives to be achieved collectively.

JPMorgan has focused on a number of statements made in internal e-mails, particularly those at Crestview, commenting about controlling a reorganized Charter and the willingness of Apollo and Oak Tree to appoint Jeff Marcus of Crestview to the board, even though Crestview's ownership percentage is below the minimum needed for board representation.

Crestview also prepared internal memoranda describing the arrangements among the bondholders as a joint effort to control Charter. These statements in the Court's view candidly reflect how the businesspeople involved in the transaction felt at the time and viewed their

parallel interests. The theme is one of we are in this together with coordination being in everyone's best interest. The Court simply is not convinced that these bondholders that found themselves by happenstance conscripted into the same restructuring were acting as a partnership, syndicate or other group for purposes of acquiring, holding or disposing of securities. No agreements, express or implied, have been shown to exist and the testimony of the bondholders makes this point emphatically clear. The Court also does not find the expert testimony of Mr. Gomperts to be persuasive.

Certain of the bondholders may be private equity firms with loan to own investment strategies, but their prime objective in these cases based on the testimony is a combination of loss mitigation and opportunism in their capacity as holders of Charter debt. Wanting to maximize the recovery by means of joining an ad hoc committee of bondholders is not equivalent to forming a group to acquire securities in the sense that 13(d) uses that term.

The Court concludes that the bondholders worked collectively and in a

coordinated fashion but did not form a 13(d) group. They are each independent actors who were brought together in this transaction by the unwanted circumstance of the restructuring initiated by Charter. Consequently, regardless of the aggregate equity or relative board power held by the so-called takeover group, Section 8(K)(2) does not apply to the transaction and Mr. Allen's board representation satisfies the requirement of Section 8(K)(1) that he hold not less than 35 percent of the ordinary voting power for the management of CCO.

I next the address the settlement with Paul Allen.

The agreement with Paul Allen is a central but somewhat controversial feature of the proposed restructuring of Charter. The Court has focused considerable attention on this aspect of the plan and has concluded that it represents an appropriate compromise of conflicting positions negotiated vigorously and in good faith and otherwise satisfies the Iridium factors for approval of a settlement it is uniquely valuable to the Charter estate by establishing the grounds for reinstatement of the Charter debt and for

realizing potential tax savings that aggregate billions of dollars.

Nonetheless, given Mr. Allen's position as chairman of Charter's board and controlling shareholder, the Court has viewed the settlement with heightened scrutiny and frankly also with some skepticism. The Court has even questioned why Mr. Allen should be receiving any valuable consideration at all for cooperating with Charter and doing things for the benefit of Charter that seem to fall under the category of the right and proper thing to do. After all, Mr. Allen has been closely associated with Charter for years and the involvement of such a well-heeled sponsor no doubt has been, until recently, an ongoing source of comfort to shareholders and creditors alike.

Although the Hippocratic oath does not apply, it is not unreasonable to expect someone in Mr. Allen's position to do no harm to those stakeholders. Skepticism notwithstanding, the Court recognizes that Mr. Allen is a businessman and that Charter is not and never was a philanthropic venture. As explained by Mr. Nelson in his rebuttal testimony the

restructuring premise from the outset assumed that Mr. Allen would be entitled to compensation for his cooperation in preventing a change of control that, depending on your perspective, either created or avoided the destruction of substantial value for other stakeholders.

The settlement with Mr. Allen also indisputably is the product of a spirited negotiation in which sophisticated adversaries and their expert advisors bargained with each other aggressively and in good faith at a time when the prospect of a freefall bankruptcy loomed large in the minds of the negotiators. The give and take of that process helps to validate the fairness of the result.

Additionally, the numbers themselves are undeniably powerful. Mr. Allen is to receive $375 million, including approximately $180 million classified as pure settlement consideration. The benefits from reinstatement, future tax savings, and proceeds of the rights offering are estimated to total well over $3 billion. The amounts to be paid to Mr. Allen, while significant in absolute dollars, are not excessive in comparison to what Charter is to receive. And that is the main

economic reason for approving the settlement. The direct and indirect value to the estate and its creditors outweighs by a high multiple the amounts allocated to Mr. Allen.

Importantly, the settlement with Mr. Allen was reviewed and approved by independent directors of Charter's board of directors who, while not members of a formal special committee, functioned as an independent group within the board. The independent directors, some of whom testified during the trial, are highly qualified individuals who had a regular practice during board meetings of convening separately for Mr. Allen and his designated directors to consider what was in Charter's best interest. These independent directors considered and approved the settlement with Mr. Allen and concluded unanimously that approval was in the best interests of Charter. Given the role played by the independent directors and the evidence indicating that Mr. Allen did not exert any undue influence over Charter in negotiating the settlement, the settlement should be evaluated under the standards applicable to approval of bankruptcy settlements in this circuit and not

under the entire fairness standard of Delaware law applicable to transactions with controlling insiders.

After giving this subject considerable thought, the Court is satisfied that the settlement with Mr. Allen is fair, in the best interests of the estate, and should be approved. The releases related to the settlement are also appropriate under the special circumstances presented and are enforceable.

The last section of this long reading relates to the objections of the CCI noteholders.

Under the Bankruptcy Code, the CCI noteholders are entitled to receive distributions of a value as of the effective date of the plan not less than the amount they would so receive if the debtors were liquidated under Chapter 7. The CCI noteholders are, contrary to their argument, receiving in excess of that. The debtor's liquidation analysis shows that in a liquidation under Chapter 7 the CCI noteholders would receive recoveries in the range of approximately 18.4 percent of their claims. The recoveries under the plan far exceed that range, providing an estimated

recovery of 32.7 percent.

Indeed, the CCI noteholders are receiving the highest recovery under the plan among all of the debtor's unsecured noteholders. The CCI noteholders base their unfair treatment argument in large part on a series of add-ons including recoveries from alleged preference and avoidance actions, programming contracts, stock options, other intercompany receivables, etc., but their expert witness, Edward McDonough, testified -- excuse me -- identified as sources from which the debtors and thereby the CCI noteholders may receive additional recoveries in a liquidation. The CCI noteholders failed, however, to present any evidence that there would or could be any actual or meaningful recoveries on account of these add-ons. Indeed, Mr. McDonough admitted during cross-examination that the CCI noteholders' potential recovery from the additional sources he identified could be lower than as stated in his expert report and even admitted that the potential recovery from any or all of the additional sources could turn out to be zero. As such, his testimony is largely speculative.

The CCI noteholders also claim that

net operating losses generated through losses of the operating companies belong to CCI and that the CCI noteholders therefore should receive additional distributions under the plan to compensate him for these NOLs. Notably, every witness who testified during the trial with respect to NOLs claimed not to be a tax expert. Furthermore, there is no evidence of the record of CCI's right independently to exploit and derive value from the NOLs regardless of which Charter entity actually owns them.

Finally, the CCI noteholders failed to produce any evidence or rebut the debtor's evidence via Mr. Dede's testimony that their claims were improperly classified separately from class A3, CCI general unsecured claims.

Based on all of the foregoing, the Court overrules all objections to confirmation of the plan and is prepared, reasonably promptly, to enter a confirmation order and a memorandum decision consistent with this bench ruling. The Court requests that parties in interest review the form of order submitted to the Court by the debtors and provide comments within the next week. The Court hopes to be in a position to enter the

order in a written decision consistent with this bench ruling within the next two to three weeks. That's all I have to say. We are adjourned.

C E R T I F I C A T I O N

I, TODD DeSIMONE, a Registered Professional Reporter and a Notary Public, do hereby certify that the foregoing is a true and accurate transcription of my stenographic notes from the audio file provided to the best of my ability.

I further certify that I am not employed by nor related to any party to this action.

Todd DeSimone

Digitally signed by Todd DeSimone
DN: cn=Todd DeSimone, o, ou, email=digital1@veritext.com, c=US
Date: 2009.10.16 18:21:44 -04'00'

TODD DeSIMONE, RPR